

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CARMENO SLOJKOWSKI,
 Plaintiff,

vs.

CLARK COUNTY FAMILY SERVICES, *et al.*,
 Defendants.

Case No. 2:12-cv-00907-KJD-CWH

FINDINGS AND
RECOMMENDATION

Plaintiff submitted a Third Application to Proceed *in Forma Pauperis* (#14) on October 3, 2012. On November 28, 2012, the Court granted Plaintiff's Application to Proceed *in Forma Pauperis* (#1) and ordered the Clerk of the Court to file Plaintiff's Complaint. *See* Order #15. In addition, the Court ordered that the Complaint be dismissed without prejudice and granted Plaintiff thirty (30) days from to file an amended complaint correcting the noted deficiencies.

Plaintiff did not adequately allege a violation of 42 U.S.C. § 1983. He appeared to allege a claim for wrongful interference with custodial rights against the Clark County Family Services and two of its employees, Bree Seaton and Mary Terzian, in violation of the Fourteenth Amendment to the Constitution. The Court found that Plaintiff did not demonstrate that this Court has subject matter jurisdiction based on a federal question. It noted that "the domestic relations exception . . . divests the federal courts of power to issue . . . child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689 (1992); *see also Peterson v. Babbitt*, 708 F.2d 465, 466 (9th cir. 1983) (per curiam) ("[F]ederal courts have uniformly held that they should not adjudicate cases involving domestic relations, including the 'custody of minors and a *fortiori*, rights of visitation.'). Additionally, the Court found that Plaintiff and Defendant are both citizens of Nevada so there is no diversity jurisdiction. More than thirty days have elapsed since the Court's Order dismissing Plaintiff's Complaint without prejudice and Plaintiff has not submitted an amending complaint with sufficient

1 facts to state a plausible claim for relief in this case.

2 Based on the foregoing and good cause appearing therefore,

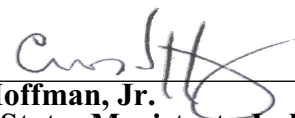
3 **RECOMMENDATION**

4 **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint (#16) be **dismissed with**
5 **prejudice** because Plaintiff failed to file an amended complaint within 30 days of the Court's
6 November 28, 2012 Order.

7 **NOTICE**

8 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
9 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
10 held that the courts of appeal may determine that an appeal has been waived due to the failure to
11 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
12 has also held that (1) failure to file objections within the specified time and (2) failure to properly
13 address and brief the objectionable issues waives the right to appeal the District Court's order
14 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
15 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

16 DATED this 2nd day of January, 2013.

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20 **C.W. Hoffman, Jr.**
21 **United States Magistrate Judge**
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